

Date: June 1, 2016  
Proposal No.: P6392

Prepared For: Mr. Robert Porter  
Chief Operations Officer  
**SAN CARLOS SCHOOL DISTRICT**  
1200 Industrial Road, Unit 9  
San Carlos, CA 94070

Re: Proposal for Preliminary Environmental Assessment Report  
750 Dartmouth Avenue  
San Carlos, CA

Dear Mr. Porter:

Thank you for this opportunity to submit our proposal for the preparation of a Preliminary Environmental Assessment (PEA) Report. Our proposal is based on the information provided to date, our scoping meetings with the Department of Toxic Substances Control (DTSC), conversations with you and our understanding of the proposed project.

### Project Background

The school campus is located at 750 Dartmouth Avenue in San Carlos, California. The approximately 20-acre campus is currently occupied by a preschool, an elementary school, and a middle school campus which consists of multiple single story buildings, sports fields, landscaping, and paved parking areas. We understand that the San Carlos School District (District) plans to modernize the existing school to include new classrooms and administration buildings. Since the District is seeking match state funds for construction of the project, regulatory oversight from the DTSC Schools Division is required.



The portion of the campus the District is requesting DTSC clearance is shown on Figure 2. This area pertains to the initial construction work planned to start in June 2016. Please note a separate DTSC PEA process will be needed for the other work planned to start at the campus in Fall 2016.

Based on our prior Phase I Environmental Site Assessment (ESA) and initial scoping meetings with DTSC staff, the areas of concern requiring further evaluation are summarized below:

- Based on the age of some of the on-Site buildings, lead-based paint may be present. Soil adjacent to structures that are painted with lead-containing paint can become impacted with lead as a result of the weathering and/or peeling of painted surfaces.
- Soil near wood framed structures may be impacted by organochlorine pesticides (OCPs) historically used to control termites.
- Asbestos occurs naturally in ultramafic rock (such as Serpentine). When this naturally occurring asbestos (NOA) material is disturbed in connection with construction or grading, asbestos-containing dust can be generated. The Department of Toxic Substances Control (DTSC) 2004 interim guidance document titled *Naturally Occurring Asbestos (NOA) at School Sites* recommends soil sampling when a proposed school site is located within a 10-mile radius of a NOA geologic formation.
- Soil adjacent to transformers or structures that use polychlorinated biphenyl (PCBs) containing caulking around windows can become impacted by PCBs as a result of the weathering and/or peeling of caulked surfaces. There is a potential that residual PCB concentrations could be present in on-site soil near the existing on-site structures.

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## **Environmental Services**

### **SOIL SAMPLING AND ANALYSES NEAR BUILDING A**

#### **Pre-Field Activities**

The following tasks will be performed prior to starting field work:

- Approximately five days before starting field work, the District will provide a field work notice to nearby businesses within view of the Site.
- We will retain a concrete coring contractor to core 5-inch diameter holes at the six locations shown on Figure 3.

#### **Subsurface Investigation**

The scope of work presented below was prepared in general accordance with the DTSC guidance titled *Interim Guidance Evaluation of School Sites with Potential Soil Contamination as a Result of Lead From Lead-Based Paint, Organochlorine Pesticides from Termiticides, and Polychlorinated Biphenyls from Electrical Transformers*, Revised 06/09/06.

Our field geologist or engineer will direct a subsurface investigation that will involve advancing 15 borings (SB-1 to SB-15) to approximate depths ranging from approximately ½ foot to 3 feet below ground surface (bgs) for collection and analyses of soil samples. The boring locations are shown on Figure 3. The soil samples will be collected using hand sampling equipment following our standard sampling protocols.

#### Sampling and Analyses Plan

Boring/Sample ID	Surface Type	Depth (feet)	Lead	OCPs	PCBs	Asbestos (PLM)	Asbestos (TEM)	Area of Potential Concern (AOPC)
Composite: SB-1,5,6 (0-½)	Hardscape	0-½ <sup>1</sup>		X				Termiticides
Composite: SB-2,3,4 (0-½)	Hardscape	0-½ <sup>1</sup>		X				
Composite: SB-1,5,6 (2½-3)	Hardscape	2½-3 <sup>2</sup>		X				
Composite: SB-2,3,4 (2½-3)	Hardscape	2½-3 <sup>2</sup>		X				
Composite: SB-13,14,15 (0-½)	Softscape	0-½		X				
Composite: SB-13,14,15 (½-3)	Softscape	2½-3		X				
SB-7 (0-½)	Softscape	0-½	X					Lead Based Paint and/or PCB-Containing Building Materials
SB-8 (0-½)	Softscape	0-½	X					
SB-9 (0-½)	Softscape	0-½	X		X			
SB-10 (0-½)	Softscape	0-½	X		X			
SB-11 (0-½)	Softscape	0-½	X		X			
SB-12 (0-½)	Softscape	0-½	X					
SB-13 (0-½)	Softscape	0-½	X					
SB-14 (0-½)	Softscape	0-½	X					
SB-15 (0-½)	Softscape	0-½	X					
B-1-10 (Ninyo & Moore, April 2016)	Softscape	10				X	X	Naturally Occuring Asbestos (NOA)
B-2-8 (Ninyo & Moore, April 2016)	Softscape	8				X	X	
B-3-4 (Ninyo & Moore, April 2016)	Softscape	4				X	X	
B-4-1 (Ninyo & Moor, April 2016)	Softscape	1				X	X	
EB-1 (Cornerstone, October, 2015)	Hardscape	1½-2				X		
EB-2 (Cornerstone, October 2015)	Hardscape	3-4				X		
EB-4 (Cornerstone, October 2015)	Softscape	3-3½				X		
EB-5 (Cornerstone, October 2015)	Softscape	9½-10				X		
Total			9	6	3	8	4	

<sup>1</sup> Soil sample will be collected from the upper approximate ½ foot of soil below the hardscape and aggregate base section.

<sup>2</sup> Soil sample will be collected from an approximate depth of 2½-3 feet below the hardscape and aggregate base section.

Please note if refusal is encountered, and mobilization of a drill rig is needed, additional fees will apply.

The soil samples will be analyzed for the compounds outlined in the table provided above. Six soil samples will be analyzed for OCPs (EPA Test Method 8081A), nine soil samples will be analyzed for total lead (EPA Test Method 6010B), and three soil samples will be analyzed for PCBs (EPA Test Method 8082). We will request the laboratory analyze the soil samples on an accelerated approximate 2-day response time.

For QAQC purposes, we have assumed one field duplicate sample and one equipment blank sample will be collected and analyzed for OCPs and lead.

Upon completion of sampling activities, a construction cone provided by the District's contractor will be placed over each borehole.

#### **ANALYSIS OF GEOTECHNICAL SOIL SAMPLES FOR NOA**

As shown in the table provided above, four soil samples from Cornerstone's November 2015 Geotechnical Investigation and Geologic Hazards Evaluation will be selected for asbestos analysis. The four soil samples will be analyzed for percent asbestos content by Polarized Light Microscopy (PLM) methods. One sample will be selected and additionally analyzed for asbestos using TEM Methods. Preparation of soil samples for analysis will follow the sample preparation method of the California Air Resources Board (CARB) Method 435. We will request the laboratory analyze the soil samples on an accelerated approximate 3-day response time.

Based on personnel communication with staff at the DTSC Schools Division, the data produced with these analyses, plus data that was produced by the previous work of Ninyo & Moore (April, 2016) will be sufficient to satisfy, in general accordance with, the DTSC document titled *Interim Guidance, Naturally Occurring Asbestos (NOA) at School Sites*, dated September 24, 2004.

#### **THIRD-PARTY DATA VALIDATION**

As required by DTSC, Level II data validation will be performed for the analytical data obtained during the PEA investigation. Data validation is a sample-specific process implemented to determine the quality of a given data set beyond the method specification, determines any causes for non-conformance to the standard method, and verifies that the reported results are within acceptable ranges. The data evaluation will be performed by third-party consultant Laboratory Data Consultants, Inc. (LDC) in Carlsbad, California. A Level II Data Validation package will be presented in the PEA report.



## **HUMAN HEALTH RISK EVALUATION**

As required by DTSC, we will coordinate with our project toxicologist to evaluate cumulative human health risk following the procedures outlined in DTSC's PEA Guidance manual dated October 2015. The risk assessment will include calculating cumulative cancer and non-cancer risks using the analytical results of the soil samples collected at the Site.

## **PREPARATION OF PEA REPORT**

We will prepare a PEA report presenting the analytical results and our conclusions and recommendations. The PEA report will include a site plan showing the sampling locations and copies of the analytical reports.

The soil sampling results will be compared to the DTSC recommended Screening Levels (SL) presented in DTSC Office of Human and Ecological Risk guidance document (HERO) *Human Health Risk Assessment (HHRA) Note 3* updated January 2016 (HERO, 2016). If an SL has not been established, the soil results will be compared to Regional Screening Levels (RSLs) established by the USEPA Region 9 (USEPA, October 2015). For detected chemicals for which SLs and RSLs have not been established, Environmental Screening Levels (ESLs) established by the San Francisco Bay Regional Water Quality Control Board (February, 2016) will be used for comparison. The results also will be compared to Total Threshold Limit Concentration (TTLC) values established by the State of California (Title 26, California Code of Regulations) for hazardous waste designation.

We will submit the draft PEA Report to DTSC for their review and comment. The District should understand the DTSC staff typically provides comments and revisions to draft documents. We will modify the draft PEA report as needed and resubmit a final draft version to DTSC for approval. Our fee estimate assumes two draft reports and one final signed report will be submitted to DTSC.

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### **Schedule**

If approval to proceed is received by June 2, we will strive to issue our draft report by June 17.

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### **Proposal Fees**

We will perform our services for the fees provided in Table 1 in accordance with the attached terms and conditions. If unforeseen conditions are encountered, or if we experience delays or circumstances beyond our control, we will notify you immediately to discuss modifications to the scope of services and/or project fees. Payment for services shall be due 30 days after receipt of Cornerstone Earth Group's Invoice. To be recognized, any dispute over charges must be claimed in writing within 30 days of the billing date. Disputes or questions about a statement

shall not be cause for withholding payment for remaining portions due. Requested changes to this contract must be approved in writing before we proceed.

**TABLE 1 – ENVIRONMENTAL SERVICES**

Task	Fixed Fee
Soil Sampling and Analyses Near Building A	\$5,125
Asbestos Analyses of Geotechnical Soil Samples	\$1,430
Third-Party Data Validation	\$715
Human Health Risk Evaluation	\$1,890
Preparation of PEA Report	\$5,630
Ongoing Coordination with Project Team and DTSC *	\$0
Contingency	\$7,500
<b>Total</b>	<b>\$22,290</b>

\* We have assumed the fee estimate for this task will be covered using the balance remaining on our April 27, 2016 Agreement that was executed with the District. As of May 27, 2016, approximately \$4,540 in charges have been incurred. Based on the authorized budget of \$7,500, the remaining approximately \$2,960 will be utilized for ongoing coordination with the project team and DTSC.

**Authorization**

Please acknowledge your receipt of and agreement with the terms and conditions contained in this agreement by signing this agreement and returning one signed original to us. To help expedite approval and project initiation, an email authorization that references this proposal and authorized fee can be sent to [ksoenen@cornerstoneearth.com](mailto:ksoenen@cornerstoneearth.com).

We thank you for this opportunity and look forward to working with you on this important project. Should you have any questions regarding this proposal, or if we may be of further service, please contact us at your convenience.

Sincerely,

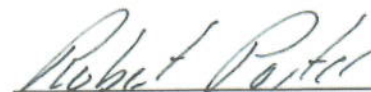
**CORNERSTONE EARTH GROUP, INC.**



Kurt M. Soenen, P.E.  
Principal Engineer


Copies: Addressee (1 by email)  
Attachments: Figures

**SAN CARLOS SCHOOL DISTRICT**

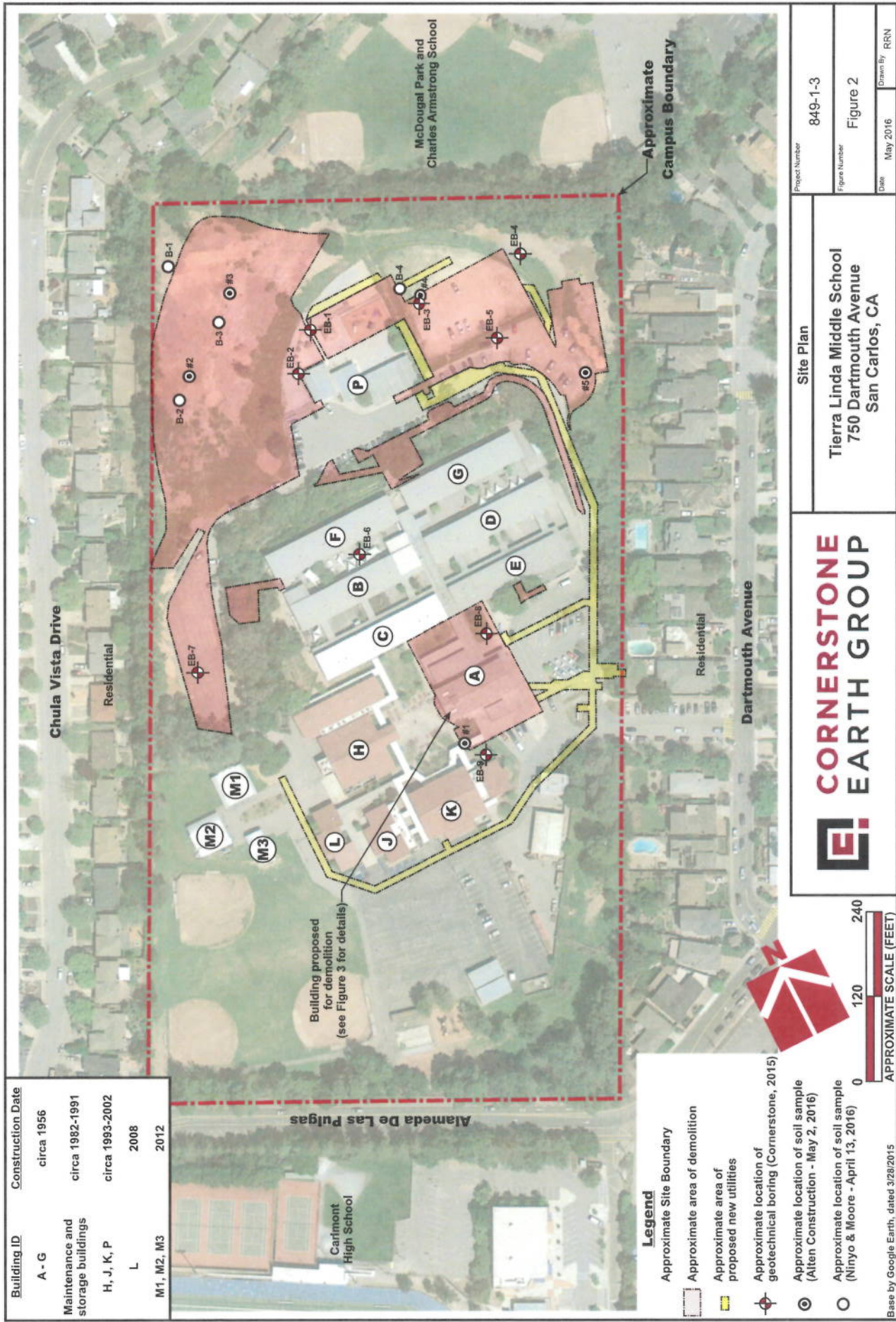
  
Name \_\_\_\_\_ Date 6/2/16  
Please Print Name and Title \_\_\_\_\_



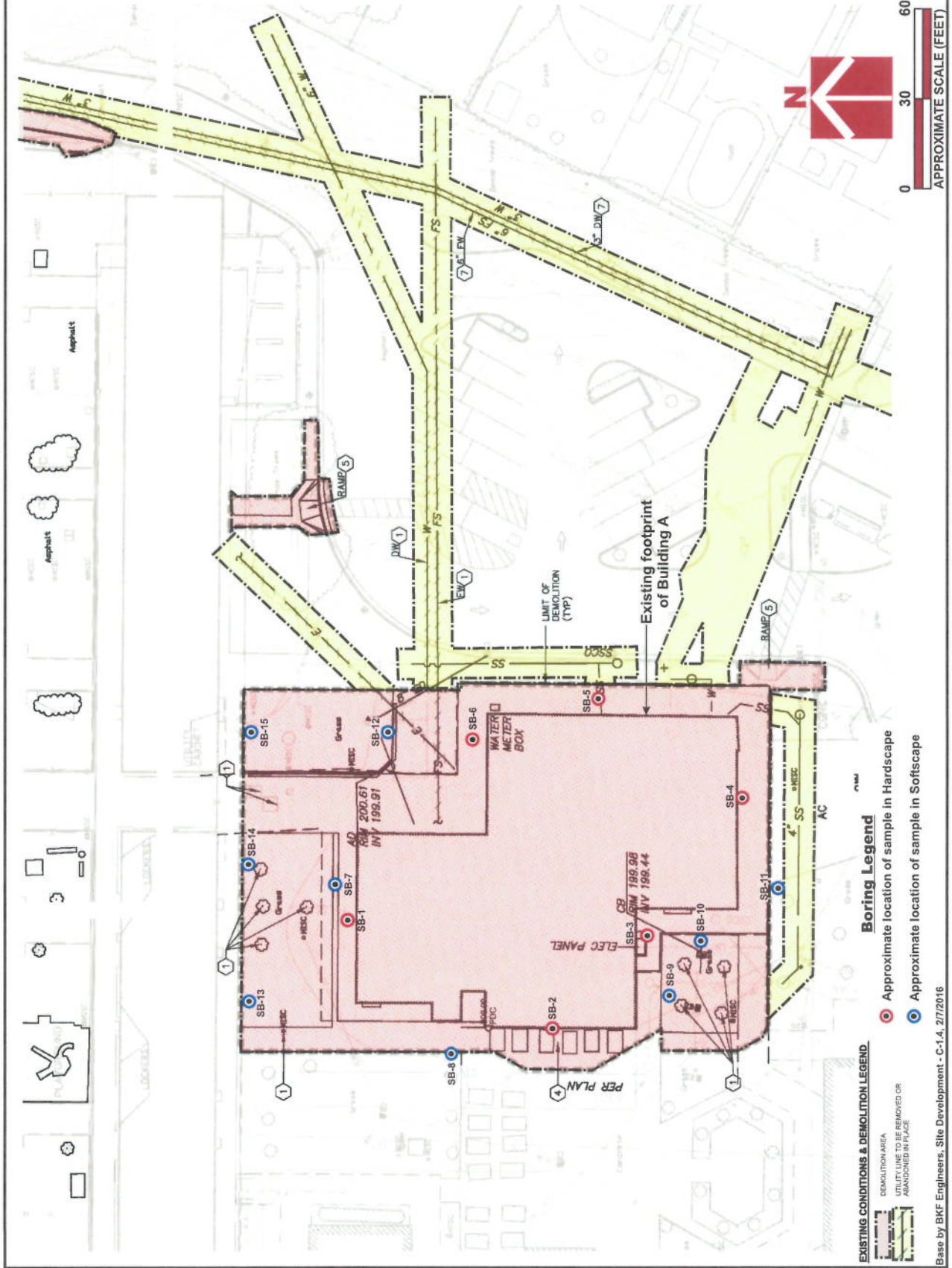


<div>  <b>CORNERSTONE</b>  <b>EARTH GROUP</b> </div>		<div> <b>Tierra Linda Middle School</b>  <b>750 Dartmouth Avenue</b>  <b>San Carlos, CA</b> </div>		<div> <b>Vicinity Map</b> </div>		<div> <div>Project Number</div> <div>849-1-3</div> </div>
		<div> <div>Figure Number</div> <div>Figure 1</div> </div>		<div> <div>Date</div> <div>May 2016</div> </div>		<div> <div>Drawn By</div> <div>RRN</div> </div>









**CORNERSTONE EARTH GROUP, INC.**  
**TERMS AND CONDITIONS**

**1. Agreement**

- 1.1 Cornerstone Earth Group, Inc.'s ("Cornerstone") services are defined by and limited to (a) those services (the "Work") described in the attached proposal, which is incorporated herein by this reference, and (b) these Terms and Conditions of Agreement ("Terms and Conditions"). Together, the proposal and Terms and Conditions form the "Agreement." This Agreement represents the entire agreement between the Client and Cornerstone (collectively, the "Parties") and supersedes all prior negotiations, representations, or agreements, either written or oral. The Agreement can only be amended by a written instrument signed by both the Client and Cornerstone. In the event that the Client authorizes the Work by means of a purchase order or other writing ("Confirmation"), it is expressly agreed that these Terms and Conditions shall apply, and any terms, conditions or provisions appearing in the Confirmation are void and inapplicable except to the extent the Confirmation authorizes the Work and binds the Client to this Agreement.
- 1.2. Failure to immediately enforce any provision in this Agreement shall not constitute a waiver of the right to enforce that provision or any other provision. No waiver by the Parties of a breach of any term or covenant contained in this Agreement, whether by conduct or otherwise, in any one or more instances shall be deemed to be or construed as a further or continuing waiver of any such breach or as a waiver of a breach of any other term or covenant in this Agreement.

**2. Scope of Services**

- 2.1 Cornerstone will serve the Client by providing professional counsel and technical advice based on information furnished by the Client. The Client will make available to Cornerstone all known information regarding existing and proposed conditions of the site, and will immediately transmit any new information that becomes available or any change in plans. The Client and Cornerstone agree that Cornerstone, its officers, directors, employees, agents and/or subcontractors shall not be liable for any claims, damages, costs, or losses arising from or in any way related to conditions not actually encountered during the course of Cornerstone's Work and Cornerstone shall not have any liability or responsibility for losses resulting from inaccurate or incomplete information supplied by the Client, and the Client agrees to defend and indemnify Cornerstone, its officers, directors, employees, agents and/or subcontractors against claims, damages, costs or losses arising therefrom. Cornerstone, its officers, directors, employees, agents and/or subcontractors shall not be liable for failing to discover any condition the discovery of which would reasonably require the performance of services not authorized by the Client.

**3. Terms of Payment**

- 3.1 The Client's obligation to pay for the Work is in no way dependent upon the Client's ability to obtain financing. The Client's obligation to pay for the Work is in no way dependent upon the Client's successful completion of the Client's project. No provision of this Agreement shall be construed to constitute a "Pay-When-Paid" clause or a "Pay-If-Paid" clause.
- 3.2 Payment for the Work shall be due and payable upon receipt of Cornerstone's invoice. To be recognized, any dispute over charges must be claimed in writing within thirty (30) calendar days of the billing date. Any dispute over an invoice amount shall not affect the Client's obligation to pay invoice amounts not in dispute. Amounts unpaid thirty (30) calendar days after the issue date of Cornerstone's invoice shall be assessed a service charge of 1 percent per month on balances outstanding.
- 3.3 Timely payment is a substantial condition of the Client's performance under this Agreement. Cornerstone may at its option withhold delivery of reports or other work product or suspend performance of the Work pending receipt of payments for all past due invoices and Cornerstone, its officers, directors, employees, agents and/or subcontractors shall have no liability to the Client for delay or damage caused because of such withholding or suspension. In the event that Cornerstone must take legal action to enforce this Agreement for payment for the Work performed and Cornerstone prevails, Cornerstone will be reimbursed by the Client for all expenses, including but not limited to reasonable attorney's fees and litigation costs.

**4. Standard of Care**

- 4.1 While performing the Work under this Agreement, Cornerstone shall exercise the degree of care and skill ordinarily exercised under similar circumstances by members of the environmental and geotechnical engineering consulting professions, as applicable, performing the kind of services to be performed hereunder and practicing in the same or similar locality at the same period of time.
- 4.2 Except for the express promise set forth in Subsection 4.1 herein, Cornerstone neither makes, nor offers, nor shall Cornerstone be liable to the Client for any express or implied warranties with respect to the performance of the Work.

**5. Force Majeure**

- 5.1 Cornerstone will diligently proceed with its services and will complete the Work in a timely manner, but it is expressly agreed to and understood by the Client that Cornerstone shall not be held responsible for delays occasioned by factors beyond its control, nor by factors which could not reasonably have been foreseen at the time of the execution of the Agreement between the parties.
- 5.2 Except for the obligation to pay for the Work performed and expenses incurred, neither Cornerstone nor the Client shall be liable for its failure to perform hereunder, in whole or in part, due to contingencies beyond its reasonable control, included, but not limited to, strikes or other concerted acts of workmen not in Cornerstone's employ, whether direct or indirect, riots, war, acts of terrorism, fire, floods, storms, washouts, acts of God or the public enemy, explosions, accidents, epidemics, breakdowns, injunctions, compliance with any law, regulation or order, whether valid or invalid, of the United States of America or any governmental body or any instrumentality thereof, whether now existing or hereafter created.

**6. Effect of Delay or Impediment to Work**

- 6.1 If any event occurs which causes or may cause Cornerstone: (a) to be impeded in its performance of the Services; or (b) to be delayed in the completion of the Work within the time provided in the attached proposal and/or in an applicable Change Order due to any act or omission of the Client, its officers, directors, employees and agents, or the Client's contractors, or due to any contingency beyond Cornerstone's control as provided in Section 5 herein, Cornerstone shall notify the Client in writing within ten (10) business days of the date on which Cornerstone becomes aware of such event.
- 6.2 The Client shall notify Cornerstone in writing of the Client's agreement or disagreement with Cornerstone's claim of an impediment or delay to performance within five (5) business days after receipt of Cornerstone's notice under Subsection 6.1. If the Client agrees with Cornerstone's claim, the time for performance of such requirement may be extended as mutually agreed in writing by the parties as provided in Subsection 1.1. If the Client disputes Cornerstone's assertion of an impediment or delay, such dispute shall be resolved pursuant to Section 17.
- 6.3 Impediments or delays to performance, addressed pursuant to this Section, shall not (a) constitute a breach hereunder; (b) give rise to any special right to terminate this Agreement; or (c) give rise to a claim by the Client for damages or other relief, if and to the extent that such impediment or delay is due to any act or omission of the Client, its officers, directors, employees and agents, or the Client's contractors, or due to any contingency beyond Cornerstone's control as provided in Section 5.

**7. Right of Entry**

- 7.1 Unless otherwise agreed in writing, the Client shall furnish and/or secure right of entry to the Site described in the proposal for Cornerstone personnel and equipment in order for Cornerstone to perform the Work. The Client shall waive any claim against Cornerstone, its officers, directors, employees, agents and/or subcontractors and agree to defend and indemnify Cornerstone, its officers, directors, employees, agents and/or subcontractors from any claims arising from entry onto the Site which is the subject of the Work.



- 7.2 The Parties acknowledge and agree that although Cornerstone will take reasonable precautions to minimize damage to property, including landscapes, hardscapes, crops and underground utilities, any and all damages, losses or expenses which could result from damage to such property due to Cornerstone's performance of the Work under this Agreement shall be the sole and exclusive responsibility of the Client provided that such damages, losses or expenses are not the result of Cornerstone's breach of the standard of care set forth in Subsection 4.1 herein. The Client shall indemnify, defend and hold harmless Cornerstone, its officers, directors, employees, agents and/or subcontractors from any damages, losses or expenses including, without limitation, attorney's fees, sustained or incurred by Cornerstone, its officers, directors, employees, agents and/or subcontractors as a result of any and all claims arising out of any damage to subsurface utilities due to Cornerstone's performance of the Work under this Agreement, provided that such claims are not the result of Cornerstone's breach of the standard of care set forth in Subsection 4.1 herein.

## **8. Monitoring of Construction**

- 8.1 The Client acknowledges and understands that unanticipated or changed conditions may be encountered during construction. There is a substantial risk to the Client and to Cornerstone if Cornerstone is not engaged to provide complete services, including but not limited to, construction observation services. Such risks include the increased likelihood of misinterpretation of Cornerstone's findings and conclusions and error in implementing recommendations by Cornerstone. If Client fails to retain Cornerstone to provide complete services, the Client agrees, notwithstanding any other provisions of this Agreement, to the fullest extent permitted by law, to indemnify and hold harmless Cornerstone, its officers, partners, employees and Cornerstones from and against any and all claims, suits, demands, liabilities, losses, damages or costs, including reasonable attorneys' fees and defense costs arising out of or in any way connected with the Work or arising out of implementing or interpreting Cornerstone's work product except when the Claim arises from the sole negligence of Cornerstone or where the Claim arises from the willful, wanton or reckless conduct of Cornerstone.
- 8.2 Cornerstone shall not be required to make exhaustive or continuous on-site observations to check the quality or quantity of the Work and shall not be responsible for any contractor's failure to carry out the work in accordance with the contract documents.
- 8.3 Cornerstone shall not be responsible for the acts or omissions of any contractor or subcontractor or any of the contractors' or subcontractors' agents or employees or other persons performing any work on the Project.

## **9. Changed Conditions**

- 9.1 If, during the term of this Agreement, circumstances or conditions that were not originally contemplated by or known to Cornerstone are revealed, to the extent that they affect the scope of services, compensation, schedule, allocation of risks or other material terms of this Agreement, Cornerstone may call for renegotiation of appropriate portions of this Agreement. Cornerstone shall notify the Client of the changed conditions necessitating renegotiation, and Cornerstone and the Client shall promptly and in good faith enter into renegotiation of this Agreement to address the changed conditions. If terms cannot be agreed to, the parties agree that either party has the absolute right to terminate this Agreement, in accordance with the termination provision hereof.

## **10. Jobsite Safety**

- 10.1 Neither the professional activities of Cornerstone nor the presence of Cornerstone or its employees, subconsultants and subcontractors shall relieve the Client or the Client's General Contractor of its obligations, duties and responsibilities, including, but not limited to, health and safety programs. Cornerstone and its personnel have no authority to exercise any control over the site or any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The Client acknowledges and agrees that Cornerstone shall not be responsible for jobsite safety.

## **11. Hazardous Materials and Environmental Contamination**

- 11.1 The Client hereby warrants that if it knows or has any reason to assume or suspect that hazardous or toxic substances, or any other type of environmental hazard, contamination or pollution may exist at the Site, the Client will immediately inform Cornerstone to the best of the Client's knowledge of such hazardous or toxic substances, environmental hazard, contamination or pollution's type, quantity and location.
- 11.2 Cornerstone, its officers, directors, employees, agents and/or subcontractors shall have no title to, ownership of, or legal responsibility and/or liability for any and all contamination at the Site, including, but not limited to, the groundwater thereunder. "Contamination at the Site" includes but is not limited to any hazardous or toxic substance, or any other type of environmental hazard, contamination or pollution present at or under the Site, including, but not limited to the ground water thereunder, which is not brought onto the Site by Cornerstone, its officers, directors, employees, agents and/or subcontractors.
- 11.3 Cornerstone and the Client agree that the discovery of unanticipated Contamination at the Site may constitute a changed condition mandating renegotiation and/or termination of this Agreement. Cornerstone and the Client agree that the discovery of unanticipated Contamination at the Site may make it necessary for Cornerstone to take immediate measures to protect the public health, safety and the environment. The Client agrees that Cornerstone may take any or all measures that in Cornerstone's professional opinion are justified to preserve and protect the health and safety of Cornerstone's personnel, the public and the environment, and the Client agrees to compensate Cornerstone for the cost of such services.
- 11.4 The Client agrees to indemnify, defend and hold harmless Cornerstone, its officers, directors, employees, agents and/or subcontractors from any and all damages, losses or expenses, including, but not limited to, reasonable attorney's fees and legal costs connected therewith, liabilities, penalties and fines sustained by Cornerstone, its officers, directors, employees, agents and/or subcontractors as a result of any and all claim with respect to and arising out of any and all Contamination at the Site, provided that such claims are not the result of Cornerstone's breach of the standard of care set forth in Subsection 4.1 herein.
- 11.5 Subsurface sampling may result in unavoidable contamination of certain subsurface areas, as when a probe or boring is advanced or drilled through a contaminated area into a clean soil or water-bearing zone. Because of the risks posed by such work, and because subsurface sampling is often a necessary part of Cornerstone's Work, the Client hereby agrees to waive all claims against Cornerstone, its officers, directors, employees, agents and/or subcontractors with respect to and arising out of any and all subsurface sampling, including but not limited to claims relating to cross-contamination occurring because of such subsurface sampling, provided that such claims are not the result of Cornerstone's breach of the standard of care set forth in Subsection 4.1 herein.

## **12. Disposal of Samples and Drill Cuttings**

- 12.1 Unless mutually agreed in writing by the Parties as provided in Subsection 1.1 herein, Cornerstone shall hold samples collected during the performance of the Work no longer than thirty (30) calendar days after their date of collection. Drill cuttings will be left on-Site. In the event that soil, rock, water, drill cuttings and/or other samples or materials are contaminated or are suspected to contain hazardous materials or other toxic substances hazardous or detrimental to public health, safety or the environment as defined by federal, state or local law, Cornerstone will, after completion of testing, notify the Client of the same in order for the Client to arrange for the disposal of the samples and/or materials. The Client recognizes and agrees that Cornerstone at no time assumes title to said samples and/or materials, and that the Client is responsible for the disposal of such samples and/or materials. The Client agrees to pay all costs associated with any storage, transport and/or disposal of samples and/or materials, and to defend and indemnify Cornerstone, its officers, directors, employees, agents and/or subcontractors from any and all claims arising out of or in any way related to the storage, transport and/or disposal of asbestos, hazardous or toxic substances, and/or pollutants, including but not limited to any samples and/or materials.

## **13. Use and Ownership of Documents**

- 13.1 All reports, letters, plans, figures, specifications, computer files, field data, logs, notes and other documents and instruments prepared by Cornerstone as instruments of service shall remain the property of Cornerstone. Cornerstone shall retain all common law, statutory and other reserved rights, including copyright thereto. In the event the Client, the Client's contractors or subcontractors, or anyone for whom the Client is legally liable makes or permits to be made any changes to reports, letters, plans, figures, specifications, computer files, field data, logs, notes and other documents prepared by Cornerstone without obtaining Cornerstone's prior written consent, the Client shall assume full responsibility for the results of such changes. Therefore, the Client agrees to waive any claim against Cornerstone and to release Cornerstone from any liability arising directly or indirectly from such changes. In addition, the Client agrees, to the

fullest extent permitted by law, to indemnify and hold harmless Cornerstone from any damages, liabilities or costs, including reasonable attorney's fees and costs of defense, arising from such changes.

The Client agrees that all reports, letters, plans, figures, specifications, computer files, field data, logs, notes and other documents and other services furnished to the Client or its agents and/or employees by Cornerstone, which are not paid for, shall be immediately returned upon demand and may not be used by the Client for any purpose. Any reports, letters, plans, figures, specifications, computer files, field data, logs, notes and other documents, advice or opinions provided by Cornerstone to the Client as part of the Work are provided for the sole and exclusive use of the Client for specific application to the Site detailed in this Agreement. Any third party use of any drafts, reports, letters, plans, figures, specifications, computer files, field data, logs, notes and other documents, advice or opinion of Cornerstone is the sole responsibility of the Client.

#### 14. Insurance

- 14.1 Cornerstone, its officers, directors, employees and agents have and shall maintain during the term of this Agreement insurance in the following types: (a) Worker's Compensation Insurance; (b) Employer's Liability Insurance; (c) Commercial General Liability Insurance (GLI); and (d) Professional Liability Insurance.
- 14.2 Cornerstone shall, at the Client's request, provide the Client with a certificate of insurance or other satisfactory evidence that such insurance has been obtained and are maintained in force through the term of this Agreement. Any additional insurance policy or increase in the coverage of existing insurance required by the Client shall constitute an additional expense under this Agreement, and the Client shall reimburse Cornerstone for any additional premiums and costs incurred by Cornerstone in connection with obtaining such additional insurance.

#### 15. Prevailing Wage Obligations

- 15.1 The Client shall notify Cornerstone in writing if the Work contemplated by this Agreement constitutes a "public work" under any and all federal, state and/or local prevailing wage laws, and/or living wage laws, including but not limited to the Davis-Bacon Act and the provisions of California Labor Code §§ 1720 *et seq.* In addition, the Client shall notify Cornerstone if Cornerstone is obligated by statute, any public contracting authority and/or a developer to pay prevailing wages and benefits and/or any predetermined wages or benefits (collectively, "prevailing wage obligations"). In the event that Cornerstone must adhere to federal, state and/or local prevailing wage obligations for the Work performed, the Client shall provide Cornerstone with any and all prevailing wage determinations applicable to the Work to be performed under this Agreement. Any prevailing wage obligations might affect the payment terms contemplated by this Agreement and thus constitute a changed condition mandating renegotiation and/or termination of this Agreement. The Client understands and agrees that Cornerstone will rely on the representations made by the Client with regard to prevailing wage obligations and the Client agrees to indemnify Cornerstone, its officers, directors, employees, agents and/or subcontractors against any and all claims, liabilities, suits, demands, losses, costs and expenses, including but not limited to reasonable attorney's fees and legal costs, arising from Cornerstone's reliance upon the Client's representations regarding prevailing wage obligations.

#### 16. Limitations—THIS CLAUSE LIMITS CORNERSTONE'S LIABILITY

- 16.1 Cornerstone shall not be responsible for the validity or accuracy of data collected by others or for interpretations made by others.
- 16.2 Cornerstone's relationship with the Client under this Agreement shall be that of an independent contractor. Nothing in this Agreement shall be construed to designate Cornerstone, its officers, directors, employees, agents and/or subcontractors as employees, agents, joint ventures or partners of the Client. Cornerstone shall have no authority to bind, commit or obligate the Client in any manner and shall not hold itself out to third parties as being capable of doing so.
- 16.3 The Client and Cornerstone have discussed the risks and rewards associated with this project, as well as Cornerstone's fee for services. After negotiation, the Client and Cornerstone have expressly agreed to allocate certain of the risks so that, to the fullest extent permitted by law, the total aggregate liability of Cornerstone, its officers, directors, employees, agents and subcontractors to the Client and all third-parties is limited to \$50,000 or the amount of Cornerstone's fee, whichever is greater, for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of this Agreement from any cause or causes. Such causes include but are not limited to Cornerstone's negligence, errors, omissions, strict liability, breach of contract or breach of warranty. In no event shall Cornerstone, its officers, directors, employees, agents and/or subcontractors be liable in contract, tort, strict liability, warranty or otherwise, for any special, incidental or consequential damages, such as but not limited to delay, disruption, loss of product, loss of anticipated profits or revenue, loss of use of any equipment or system, non-operation or increased expense of operation of any equipment or systems, cost of capital, or cost of purchase or replacement equipment systems or power.
- 16.4 Notwithstanding any other provision of this Agreement, the total aggregate liability of Cornerstone, its officers, directors, employees, agents and subcontractors to the Client and all third parties, including attorney's fees awarded pursuant to this Agreement, for claims, damages or losses arising out of the treatment, transport, storage, discharge, dispersal or release of hazardous materials, shall be limited to \$50,000 or the amount of Cornerstone's fee, whichever is greater and regardless of the legal theory under which liability is imposed.
- 16.5 For an additional 5% of Cornerstone's total fee or \$500, whichever is greater, Cornerstone will raise the limitation of liability up to the amount that actually would be paid by Cornerstone's insurance carriers if Client and Cornerstone initial below:

LIMITATION INCREASE: THE LIMITATION OF LIABILITY IS INCREASED TO THE ACTUAL AMOUNT PAID BY CORNERSTONE'S INSURANCE CARRIERS IN EXCHANGE FOR AN ADDITIONAL FEE OF 5% OF THE TOTAL SERVICE CHARGE OR \$500, WHICHEVER IS GREATER.

Client's Initial	Date	Cornerstone's Initial	Date
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- 16.6 The Client shall indemnify, defend and hold harmless Cornerstone and its officers, directors, employees, agents and subcontractors from any and all damages, losses, or expenses, included but not limited to reasonable legal expenses and attorney's fees connected therewith, sustained by Cornerstone, its officers, directors, employees, agents and subcontractors as a result of any and all claims, demands, suits, causes of action, proceedings, judgments and liabilities for property damage, statutory penalty and/or personal injury with respect to and arising out of the Client's negligent acts, omissions or material breach of this Agreement. In the event a claim is the result of joint negligent acts or omissions of the Client and Cornerstone, the Client's duty of indemnification shall be in proportion to its respective allocable share of the joint negligence.
- 16.7 Client acknowledges and agrees that in no event shall any action or proceeding be brought against Cornerstone or proceeding be brought against Cornerstone by Client or its assignees for any claim or cause of action arising from or in any way related to the Work or this Agreement unless such action or proceeding is commenced within three (3) years from the Date of Completion of Work provided by Cornerstone under this Agreement. The Date of Completion shall be the date of the final invoice for the Work performed under this Agreement.
- 16.8 If Client requests that Cornerstone's work product be relied upon by a third party, including, but not limited to a lender, Client agrees to provide the third party with a copy of these terms and conditions, and Client agrees to require said third party to agree to limit Cornerstone's total liability to Client and any third party as described in paragraph 16.4 and Client agrees to indemnify Cornerstone, its officers, directors, employees, agents and/or subcontractors against any and all claims, liabilities, suits, demands, losses, costs and expenses, including but not limited to reasonable attorney's fees and legal costs, arising from third party claims, damages, costs and losses arising out of or in any way related to Work.

#### 17. Disputing Cornerstone's Performance

- 17.1 Except as provided in Section 6 and Subsection 17.2 herein, if Cornerstone shall breach any provision herein, the Client shall notify Cornerstone within five (5) business days of the Client's knowledge of such breach. Except as provided in Subsections 17.3 herein, upon receipt of the Client's notice, Cornerstone shall have the option to take such corrective measures, if any, to remedy the breach, and shall notify the Client within five (5) business days after receipt of the

Client's notification of the corrective measures Cornerstone shall take and the estimated time period within which the corrective measures shall be taken. In no event shall Cornerstone be liable to the Client for any damages without being given a reasonable opportunity to remedy its breach as provided herein.

- 17.2 The Client shall make no claim for professional negligence unless the Client has first provided Cornerstone with a written certification executed by an independent Consultant currently practicing in the same discipline and locality as Cornerstone and licensed in the State of California. This certification shall (a) contain the name and license number of the certifier; (b) specify the acts or omissions that the certifier contends are not in conformance with the standard care for a Cornerstone performing professional services under similar circumstances; and (c) state in detail the basis for the certifier's opinion that such acts or omissions do not conform to the standard of care. This certificate shall be provided to Cornerstone no less than thirty (30) calendar days prior to the presentation of any claim or the institution of any mediation, arbitration or judicial proceeding.
- 17.3 Cornerstone agrees that upon receipt of written notice from the Client pursuant to Subsection 17.2 herein it will implement necessary corrections to the Work performed by Cornerstone that fails to conform to the standard of care that Cornerstone has accepted pursuant to Subsection 4.1, as mutually agreed in writing by the Parties as provided in Subsection 1.1. herein, if such written notice is received within one (1) year of the performance of the Work failing to conform to Subsection 4.1. If Cornerstone has been paid by the Client for such Work, Cornerstone shall perform the corrections at its own expense. If Cornerstone has not been paid by the Client for such Work, and the Work is subsequently corrected to conform with the standard of care that Cornerstone has accepted pursuant to Subsection 4.1, the Client shall pay Cornerstone in accordance with Section 3 herein.
- 17.4 In no event shall Cornerstone, its officers, directors, employees, agents and/or subcontractors be liable for any special, incidental or consequential damages, such as but not limited to delay, disruption, loss of product, loss of anticipated profits or revenue, loss of use of any equipment or system, non-operation or increased expense of operation of any equipment or systems, cost of capital, or cost of purchase or replacement equipment systems or power, or any other incidental, special, indirect or consequential damages of any kind or nature whatsoever resulting from Cornerstone's performance or failure to perform the Work in accordance with the standard of care that Cornerstone has accepted pursuant to Subsection 4.1.

## 18. Termination

- 18.1 Cornerstone shall have the right to terminate this Agreement ten (10) business days after written notice is sent to the Client if (a) the Client fails to pay any of Cornerstone's undisputed invoices within sixty (60) days from the date of the invoice; or (b) Cornerstone's attached proposal and/or the Work was based upon misinformation, whether by the Client or a third party, or upon information not fully disclosed to Cornerstone, whether by the Client or a third party.
- 18.2 Except as provided for in Section 6, and after compliance with Section 17, the Client shall have the right to terminate this Agreement ten (10) business days after written notice is sent to Cornerstone if Cornerstone fails to comply in any material respect with any of the material provisions herein and subsequently fails to notify the Client pursuant to Subsections 17.1 and 17.3 of the corrective measures Cornerstone intends to take.
- 18.3 The termination of this Agreement by Cornerstone under Subsection 18.1 herein, or by the Client under Subsection 18.2 herein, shall not relieve the Client of its obligations to pay Cornerstone for any of the Work performed and expenses incurred as of the date of termination, and shall not constitute a waiver by Cornerstone or the Client of any cause of action for breach of this Agreement or any provision herein.

## 19. Miscellaneous Provisions.

- 19.1 "Indemnity Defined. The term "indemnify" shall mean indemnify, defend and hold harmless from and against any and all claims, liabilities, suits, demands, losses, costs and expenses, including but not limited to reasonable attorney's fees and all legal costs incurred on appeal, and all interest thereon, accruing or resulting to any and all persons, firms, or any other legal entities, on account of any damages or losses to property or persons, including death or economic losses, arising out of the item, matter, action or inaction specified in the specific provision.
- 19.2 Choice of Counsel. In any circumstance whereby Cornerstone is entitled to indemnification by the Client, Cornerstone shall have the right to select counsel of its choosing.
- 19.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and assigns as provided herein. The Client shall not assign, sell, transfer or subcontract this Agreement or any interest herein without the prior written consent of Cornerstone. Cornerstone shall not assign, sell, transfer or subcontract this Agreement or any interest herein without the prior written consent of the Client. The Client hereby consents to the subcontracting of those portions of the Work as the attached proposal herein indicates are or will be subcontracted. Notwithstanding the above, Cornerstone shall have the right to assign monies due hereunder for the Work performed and expenses incurred.
- 19.4 Third Party Beneficiaries. The Parties agree that this Agreement is not intended by either Cornerstone or the Client to give any benefits, rights, privileges, actions or remedies to any person or entity, partnership, firm or corporation as a third party beneficiary or otherwise under any theory of law, that is not a signatory to this Agreement.
- 19.5 Survival. In order that the Parties may fully exercise their rights and perform their obligations arising from the performance of this Agreement, any provisions of this Agreement that are necessary to ensure such exercise or performance shall survive the termination of this Agreement.
- 19.6 Severability. If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any federal, state or local law having jurisdiction over this Agreement, the validity of the remaining parts, terms or provisions of this Agreement shall not be affected thereby.
- 19.7 Choice of Law and Venue. This Agreement shall be governed by California law. The venue for any legal action brought pursuant to this Agreement shall be located within the County of Santa Clara, State of California.
- 19.8 Publicity. Unless otherwise mutually agreed in writing by the parties as provided in Subsection 1.1, Cornerstone may use and publish the Client's name and a general description of Cornerstone's services with respect to the Work in describing Cornerstone's experience and qualifications to other clients or prospective clients.
- 19.9 Signatories. Each undersigned representative of the Parties to this Agreement certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such Party to this document.
- 19.10 Corporate Protection. It is intended by the parties to this Agreement that Cornerstone's services in connection with the Work shall not subject Cornerstone's individual employees, officers or directors to any personal legal exposure for the risks associated with this Project. Therefore, and notwithstanding anything to the contrary herein, the Client agrees that as the Client's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against Cornerstone, a California Corporation, and not against any of Cornerstone's individual employees, officers or directors.
- 19.11 Code Compliance. Cornerstone shall exercise usual and customary professional care in its efforts to comply with applicable laws, codes and regulations as of the date of this Agreement.
- 19.12 Quotation. Unless stated in writing, this quotation shall not remain in effect after thirty (30) days of the Proposal date.
- 19.13 Contractors State License. Cornerstone maintains a General Engineering A license (No. 905816) with a Hazardous Substances Removal and Remedial Actions Certification with the State of California, which are regulated by the Contractors State License Board. Any questions concerning a contractor may be referred to the Registrar, Contractors State License Board, P.O. Box 26000, Sacramento, California 95826.